

Appeal from decision of Eastern States Office, Bureau of Land Management, rejecting oil and gas lease offer ES-16006.

Dismissed.

1. Administrative Practice -- Appeals -- Practice Before the Department: Persons Qualified to Practice -- Rules of Practice: Appeals: Dismissal

An appeal brought by a person who does not fall within any of the categories of persons authorized by regulation to practice before the Department is subject to dismissal.

APPEARANCES: Mr. J. W. Lloyd, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

J. C. Trahan appeals from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated October 27, 1982, rejecting acquired lands noncompetitive oil and gas lease offer ES-16006. The decision stated: "The lands requested are within a known geologic structure [KGS] of a producing oil or gas field and are therefore not available for noncompetitive leasing. (43 CFR 3101.1-1, 43 CFR 3110.1-8)."

[1] At the outset, we wish to note that appellant does not represent himself in this appeal. At the conclusion of the notice of appeal, appellant's name, J. C. Trahan, is typed, followed by the handwritten words "by: J. W. Lloyd." The statement of reasons, written on the corporate stationery of Trahan Petroleum, Inc., is signed in the following manner: "J. C. Trahan, per J. W. Lloyd." Again, "J. W. Lloyd" is handwritten and appellant's name is typed.

Departmental regulation 43 CFR 1.3 defines who may practice before the Department. 1/ Lloyd has made no showing that he is qualified under this

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1/ That regulation provides as follows:

"(a) Only those individuals who are eligible under the provisions of this section may practice before the Department, but this provision shall not

regulation. Although appellant's statement of reasons was written on corporate stationery, there is nothing in the offer to indicate that Trahan Petroleum, Inc., has an interest in the offer. Therefore, Lloyd cannot be appearing on behalf of the corporation as an officer or full-time employee as provided in 43 CFR 1.3(b)(3). Mr. Lloyd is appearing on behalf of J. C. Trahan and has made no showing that he is authorized to practice before the Department. An appeal brought by a person who does not fall within any of the categories of persons authorized by the regulation to practice before the Department is subject to dismissal. Thomas L. Tuttle, 71 IBLA 265 (1983); Verne G. Long, 57 IBLA 263 (1981); W. Duane Kennedy, 24 IBLA 152 (1976); Pierce and Dehlinger, 22 IBLA 396 (1975); see also United States v. Gayanich, 36 IBLA 111 (1978). The appeal is therefore dismissed. Although this regulation may occasionally penalize a particular appellant, its enforcement is necessary to protect those who do business with the Department against the risk of inadequate representation by persons untrained in the law.

This Board observes, by way of dicta, that were we to consider this appeal on its merits, we would affirm the decision below. On appeal appellant asserts that BLM's delay in issuing the lease has prevented his planned operation from taking place. Acquired lands within a known geological structure of a producing oil or gas field shall be leased only by competitive bidding. See 43 CFR 3101.2-1(a). Competitive bidding procedures are outlined in 43 CFR Part 3120. See also 30 U.S.C. § 359 (1976). If lands embraced in a noncompetitive oil and gas lease offer are determined to be within a KGS

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fn. 1 (continued)

be deemed to restrict the dealings of Indian tribes or members of Indian tribes with the Department.

"(b) Unless disqualified under the provisions of § 1.4 or by disciplinary action taken pursuant to § 1.6:

"(1) Any individual who has been formally admitted to practice before the Department under any prior regulations and who is in good standing on December 31, 1963, shall be permitted to practice before the Department.

"(2) Attorneys at law who are admitted to practice before the courts of any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Trust Territory of the Pacific Islands, or the District Court of the Virgin Islands will be permitted to practice without filing an application for such privilege.

"(3) An individual who is not otherwise entitled to practice before the Department may practice in connection with a particular matter on his own behalf or on behalf of (i) a member of his family; (ii) a partnership of which he is a member; (iii) a corporation, business trust, or an association, if such individual is an officer or full-time employee; (iv) a receivership, decedent's estate, or a trust or estate of which he is the receiver, administrator, or other similar fiduciary; (v) the lessee of a mineral lease that is subject to an operating agreement or sublease which has been approved by the Department and which grants to such individual a power of attorney; (vi) a Federal, State, county, district, territorial, or local government or agency thereof, or a government corporation, or a district or advisory board established pursuant to statute; or (vii) an association or class of individuals who have no specific interest that will be directly affected by the disposition of the particular matter."

before a lease issues, the offer must be rejected. See McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974); Elcoex, Inc., 68 IBLA 130 (1982); R. L. Mulholland, 61 IBLA 175 (1982). The Department is without authority to issue a noncompetitive lease for these lands.

Further, the delay before the declaration that the area was within a KGS does not aid appellant since an applicant for a noncompetitive lease acquires no vested right to a lease by the filing of an application but only an inchoate right to receive a lease over a later applicant. Robert L. Lyon, 66 IBLA 141, 146 (1982). BLM was required by statute to reject appellant's offer following Survey's determination. Robert L. Lyon, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Gail M. Frazier  
Administrative Judge